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# United States Court of Appeals For the First Circuit

No. 05-2472

↓  
#339

UNITED STATES,

Appellee,

v.

SAMUEL ARCE-LEON,

Defendant, Appellant.

Before

Lipez, Circuit Judge,  
Campbell, Senior Circuit Judge,  
and Howard, Circuit Judge.

JUDGMENT

Entered: January 3, 2007

Samuel Arce-Leon challenges the sentence he received for violating the terms of supervised release. Because the Defendant failed to preserve this issue below, we review for plain error. United States v. Ayers, 946 F.2d 1127, 1131 (5th Cir. 1991).

We find that the district court did not commit plain error when sentencing the Defendant. Though the district court may have miscalculated the grade level of the supervised release violation, the grade level is not necessarily the operative factor and the Defendant has not proven that it was critical in this particular case. United States v. McInnis, 429 F.3d 1, 4 (1st Cir. 2005). We are also unpersuaded by the Defendant's argument that the sentence was unexplainably harsh. Though it exceeded the recommended range, these recommendations are merely advisory. Id.; see also United States v. Work, 409 F.3d 484, 489 (1st Cir. 2005); 18 U.S.C. §3553(a)(4)(B). Furthermore, the district court explained its view that the firearms violations were significant in nature.

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Accordingly, the sentence is summarily affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Richard Cushing Donovan, Clerk.

Entered and Issued as Mandate  
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk

  
Deputy Clerk

Date: 1/25/07

By: MARGARET CARTER  
Chief Deputy Clerk.

[cc: Johnny Rivera-Gonzalez, Esq., Timothy Henwood, AUSA,  
Nelson Perez-Sosa, AUSA, Thomas Klumper, AUSA]